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*Attorney for Plaintiff*  
*Free Speech Systems LLC*

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

**FREE SPEECH SYSTEMS, LLC**, a Texas  
limited liability company,

Plaintiff,

vs.

**PETER MENZEL**, an individual,

Defendant.

Case No.: \_\_\_\_\_

**28 U.S.C. § 2201 COMPLAINT FOR  
DECLARATORY RELIEF**

Plaintiff Free Speech Systems, LLC ("FSS") hereby complains against  
Defendant Peter Menzel as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff FSS is a Texas limited liability company with its principal place  
of business in Austin, Texas.

2. Upon information and belief, Defendant Peter Menzel is an individual  
residing and working in Napa, California.

3. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331  
and 1338, as this case arises under the U.S. Copyright Act.

1           4.       This Court has personal jurisdiction over Defendant Menzel because  
2 he is a resident of this judicial district and regularly conducts business within this  
3 judicial district.

4           5.       Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) & (c).

5                           **ALLEGATIONS COMMON TO ALL CLAIMS**

6           6.       Plaintiff FSS is the owner and operator of Infowars, a news and opinion  
7 website located on the World Wide Web at <infowars.com> ("Infowars").

8           7.       On or about April 30, 2012, a news article entitled *Amazing Photos*  
9 *Show What the World Really Eats* (the "Article") appeared on the Infowars  
10 website. (See Anthony Gucciardi, *Amazing Photos Show What the World Really*  
11 *Eats*, INFOWARS.COM (April 30, 2012), available at <infowars.com/amazing-photos-  
12 show-what-the-world-really-eats>, attached hereto as **Exhibit 1.**)

13           8.       The Article contained descriptions, insights, and commentary  
14 regarding the average family's weekly diet in the United States, Mexico, Canada,  
15 Italy, China, Chad, Japan, Germany, and Great Britain. Each country's mention  
16 was associated with a photograph of a family from that country and a week's  
17 worth of food.

18           9.       The Article covered and promoted a book entitled *Hungry Planet:*  
19 *What the World Really Eats*, indicated that the images were from that book, and  
20 provided a hyperlink where Infowars users could purchase the book from  
21 Amazon.

22           10.      While the images referenced in the Article appeared to have been  
23 displayed on the Infowars website, they were not stored on servers owned or  
24 controlled by Plaintiff FSS. Rather, the Infowars website provided links that directed  
25 its users' browsers to a third party's computer where the images had already been  
26 uploaded and stored, a process known as in-line hyperlinking. Accordingly, FSS  
27

1 never transmitted, copied, distributed, displayed, or stored any of the images  
2 associated with the Article.

3 11. From April 30, 2012 until December 26, 2018, the Article remained on  
4 the Infowars site without incident or controversy. However, on or about December  
5 26, 2018, Plaintiff FSS received a demand letter from counsel for Defendant Peter  
6 Menzel. (See Demand Letter dated December 26, 2018, attached hereto as  
7 **Exhibit 2.**)

8 12. The demand letter alleged that Mr. Menzel was the photographer for  
9 each of the seven photographs in the Article and stated that FSS's "publication  
10 of Mr. Menzel's content without his permission is a violation of the [United States]  
11 Copyright Act." (See *id.*)

12 13. On January 10, 2019, counsel for FSS responded, demonstrating that  
13 the allegations of Mr. Menzel's demand letter were meritless. (See Response Letter  
14 dated January 10, 2019, attached hereto as **Exhibit 3.**)

15 14. Specifically, FSS's response stated that the three-year statute of  
16 limitations on copyright claims barred any claims that Mr. Menzel might have had;  
17 that FSS's use of the photographs was a fair use; and that FSS's use of the  
18 photographs did not affect the market value of the photographs. (See *id.*)

19 15. FSS's response additionally indicated that the Article attributed the  
20 photographs to the *Hungry Planet* book in which they appeared and included a  
21 hyperlink to purchase the book at Amazon. (See *id.*)

22 16. The response finally demonstrated that myriad other news outlets  
23 had also covered the *Hungry Planet* book, including Time Magazine, NPR, the  
24 Daily Mail, ActivistPost, FStoppers, TruthTheory, Wake-UpWorld, and LipstickAlley.  
25 (See *id.*) In fact, Time Magazine's coverage of the book included twenty-seven  
26 photographs from the book.  
27



24. Plaintiff FSS seeks a declaration of its rights from this Court that it has not directly, contributorily, or vicariously infringed upon Defendant Menzel's copyrights for myriad reasons, including but not limited to:

- a. FSS's servers did not host the photographs. Rather, the servers of a third party had already been hosting them, and FSS merely directed users' browsers to them via in-line hyperlinking;
- b. FSS engaged in a fair use of Mr. Menzel's photographs; and
- c. The three-year statute of limitations for asserting a claim for copyright infringement had passed well before Mr. Menzel sent his demand letter to FSS.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff FSS requests judgment against Defendant Peter Menzel as follows:

A. A declaration from this Court, pursuant to 28 U.S.C. § 2201, that Plaintiff's use of Defendant's photographs was and is lawful and proper and does not infringe upon any right Defendant Menzel may claim in the photographs;

B. A declaration from the Court that the three-year statute of limitations for filing copyright actions has expired in the instant matter;

C. An award of FSS's reasonable costs and expenses, including its reasonable attorneys' fees pursuant to 17 U.S.C. § 505; and

D. For such other and further relief as the Court deems just and proper.

Dated: February 8, 2019

Respectfully submitted,

/s/ Alex J. Shepard

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